

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

File No. 1:11-CR-287

REED STANLEY BERRY,

Defendant.

Sentencing

Before

THE HONORABLE ROBERT HOLMES BELL
United States District Judge
April 19, 2012

APPEARANCES

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Kevin W. Gaugier, CSR-3065
U.S. District Court Reporter

Grand Rapids, Michigan

April 19, 2012

10:40 a.m.

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P R O C E E D I N G S

THE COURT: Good morning. The next matter is the matter of United States v. Reed Stanley Berry. This is file 1:11-CR-287. Mr. Frank is here representing the United States Attorney's Office. Mr. Muawad is retained counsel representing Mr. Berry.

The parties were here last on December 12th of 2011 when a plea was entered to an indictment charging assault with a dangerous weapon against a federal officer, that being an automobile, contrary to 18 United States Code 111(a)(1) and (b). This plea agreement was accepted at the time of the plea, the Court finding that the charge pled to adequately reflects the seriousness of the actual offense behavior in this matter.

A presentence report subsequent thereto was prepared by Mr. Dingwall. It is some 19 pages in length and I believe has been circulated to counsel. Does the government have any corrections, additions or deletions?

MR. FRANK: No, Your Honor.

1 THE COURT: Very well. Mr. Muawad?

2 MR. MUAWAD: No, Your Honor.

3 THE COURT: Very well. Have you had a chance, Mr.
4 Berry, to review this presentence report in this matter?

5 DEFENDANT BERRY: Yes, sir.

6 THE COURT: Does that presentence report adequately
7 represent you and your background?

8 DEFENDANT BERRY: Yes, sir.

9 THE COURT: Are you satisfied with counsel here who
10 is representing you?

11 DEFENDANT BERRY: Yes, sir.

12 THE COURT: Very well. The Court has reviewed in
13 addition to the presentence report a very fine memorandum from
14 defendant's counsel related to this and has reviewed that
15 extensively, and there are a number of family members who have
16 written letters on behalf of Mr. Berry in this case and the
17 Court has read all of them.

18 Are there any matters that should be taken up before
19 allocution, Mr. Frank?

20 MR. FRANK: Not for the government, sir.

21 THE COURT: Mr. Muawad?

22 MR. MUAWAD: No.

23 THE COURT: You and your client may come to the
24 podium and I will hear first from you and then from your
25 client. Thank you.

1 MR. MUAWAD: Thank you, Your Honor.

2 One correction that's not pertaining to the
3 presentence report. In my sentence memorandum I had stated, I
4 believe, on Page 5, the second full paragraph down, that Mr.
5 Berry had found out he was on the no-fly zone. I was
6 incorrect. He did not find out that he was on the no-fly zone
7 until after the September 11th weekend that this incident
8 occurred. For some reason in my mind during the detention
9 hearing I had thought there was some testimony to that and I
10 was wrong, and I confirmed that with my client this morning,
11 and I also told the U.S. attorney that I was going to make
12 that correction.

13 When I met Mr. Berry, I met Mr. Berry at a
14 McDonald's with his father. I note his father and stepmother
15 are sitting in the back there, and we had many, many talks
16 about the search warrant and issues pertaining to facts that
17 are not in this case, and I don't think anybody could have
18 foreseen what was going to happen on September 11th. I do
19 know that -- I'm sorry, September 9th, excuse me. I was
20 saying the September 11th weekend. When I say September 11, I
21 mean the weekend encompassing the 9th, 10th, and 11th.

22 THE COURT: Yeah.

23 MR. MUAWAD: That's when they started surveillance,
24 and I don't think we could have ever foreseen what was
25 happening that weekend. What I can tell you about is the

1 talks that I've had with Mr. Berry about his future and his
2 plans to get married and do many, many things.

3 THE COURT: Well, I want to ask about that.

4 MR. MUAWAD: Sure, Judge.

5 THE COURT: This love of his wife and on and on
6 about wife, and then I'm led to believe here that she lives in
7 England.

8 MR. MUAWAD: She does.

9 THE COURT: There is no marriage ceremony?

10 MR. MUAWAD: There is in -- there is no marriage
11 ceremony as we think about the formality in the States. In
12 the tradition, the Muslim tradition, there is a ritual that is
13 not really binding or as formal, but he never got to that
14 point. When he was trying to fly over there and he found he
15 was on a no-fly zone, I think he was trying to work that out.

16 DEFENDANT BERRY: It's a verbal agreement. The
17 marriage happens after.

18 MR. MUAWAD: Yeah, it was a --

19 THE COURT: Well, a verbal agreement is not a
20 marriage. I mean, she --

21 DEFENDANT BERRY: Well --

22 MR. MUAWAD: Hang on.

23 THE COURT: Excuse me. Excuse me, sir. I'm using
24 American law. I'm not using somebody else's law. So --

25 MR. MUAWAD: Right. Right.

1 THE COURT: A person may love somebody and they may
2 intend to marry them and they're called fiances.

3 MR. MUAWAD: Right.

4 THE COURT: I think that's what they're called. A
5 lot of people have fiances indefinitely, but be that as it
6 may, this apparently was his intention to get married.

7 MR. MUAWAD: Yes. Yes, sir, that's correct.

8 THE COURT: Is that a better interpretation than
9 wife in this case?

10 MR. MUAWAD: Yes, sir.

11 THE COURT: All right. Continue on. Thank you.

12 MR. MUAWAD: In his mind he considered her his wife,
13 but not an official wife or fiancée, whatever you want to call
14 it, but I agree with you.

15 THE COURT: Well, the problem is his reality may not
16 be everybody else's reality, and I've been back and forth as I
17 read everything here trying to figure out whose reality we're
18 talking about here.

19 MR. MUAWAD: I see.

20 THE COURT: And I'm troubled by his reality and I'll
21 talk about that in a moment.

22 MR. MUAWAD: Fair enough.

23 THE COURT: But if you can stay on my reality, okay?

24 MR. MUAWAD: Absolutely. Absolutely, Judge, and I
25 do agree with you there was nothing formal.

1 THE COURT: Thank you.

2 MR. MUAWAD: Anyway, on the date of the incident, as
3 you know, he was being surveilled due to the concerns by the
4 FBI, and Mr. Berry did know that the police were surveilling
5 him. I don't think there's any question about that. Whether
6 he knew it was the actual FBI or a task force, I don't think
7 he knew that.

8 But he has told me on a number of occasions, Judge,
9 and I know that the presentence report at the beginning
10 reflects possibly the opposite, but he knows that what could
11 have happened that day is he could have been shot. The agent
12 legitimately could have pulled his weapon out and shot him.

13 But not only that, he admits the fact that he did
14 put the agent in jeopardy. You can't, if you believe you're
15 being surveilled and know you're being surveilled in this
16 world in our life here in the States, you can't put your car
17 in reverse and attack a police officer. I think he said in
18 Paragraph either 35 or 37 of the presentence report that he
19 did feel bad for the agent, that he was remorseful, and he has
20 told me from the get-go even prior to the plea that he was
21 remorseful.

22 He had plans. I mean, he had plans to try to fly
23 over to England and live a life possibly there or move back
24 here, maybe bring, if he is married, bring his fiancée or the
25 person that he loved back here. His plans were to continue

1 his hunt for a job. His father, you know, has been very
2 supportive of his son. It's his son, and he has a very good
3 relationship with him.

4 But there's no question that when you look, and Reed
5 will tell you, Mr. Berry will tell you that his past criminal
6 history, you know, with the marijuana charges and then, you
7 know, the hanging around with the wrong friends, obviously,
8 and picking up the felony with the state court, doing 18
9 months, he will tell you that in his opinion that's the old
10 Reed Berry. He's going to make a statement to you that he was
11 in his mind on his way to trying to get back in the normalcy
12 of life.

13 I don't believe, Judge, that he had any drug problem
14 during the time of this incident, nor was he smoking weed or
15 doing anything to the contrary. I think the facts will show
16 and he'll state to you that he was on his way to becoming
17 drug-free and getting rid of that nonsense that he had prior
18 to the arrest.

19 What I can tell you about Mr. Berry in my personal
20 viewpoints, for whatever it's worth, is that he's highly
21 intelligent. I think that I've had a couple talks with the
22 U.S. attorney and he has some knowledge that I'm not as
23 familiar with on the computer, but he has, and I think
24 everybody would agree with this, this man has a future if it's
25 channeled in the right direction. Whether it's computers,

1 legitimate computer use or starting his own business, whether
2 it's living crime-free, he's got that potential. I know that
3 before he was arrested it seems like he was heading in that
4 direction, and he has told me on more than one occasion that
5 he feels bad and is remorseful.

6 We've had talks not only at the White Cloud jail,
7 but talks prior to him getting arrested about the other issues
8 that could cause him problems. We don't know if that's ever
9 going to come back to haunt him.

10 The fact of the matter is he's here for sentencing.
11 We know what the guidelines are. There's no objection to
12 them. We know they are recommended guidelines and they're
13 there based upon the factors stated in our, you know, rules of
14 criminal procedure, rules of criminal law, that you have to
15 follow those factors. I'm hoping the Court will consider a
16 deviation under the recommended guidelines. You know, I'm not
17 here to -- I could put a recommendation, but it's really not
18 my choice to give you that recommendation.

19 In my mind, Judge, what he did was wrong. There's
20 no question. I think that, you know, he could have been shot
21 and killed, like I said, and he could have hurt the agent.
22 And I think the Court probably has to give a sentence that
23 makes a lesson out of somebody that does that, especially the
24 police officers or marshals.

25 But I'm hoping the Court when looking at all the

1 mitigating circumstances and looks at the fact that the
2 frustration -- no excuse. I'm not sitting here and telling
3 you that frustration equates into committing a crime. But I
4 do hope the Court will consider the fact that it's a situation
5 that he knows he put himself into, an isolated situation in my
6 opinion, and that the recommended guidelines are high because
7 of his prior criminal history, but I'm hoping that the Court
8 will consider a deviation under the guidelines. I've tried to
9 put another side to Mr. Berry based upon some of the letters
10 and other things stated in my sentence memorandum, but at this
11 point in time I'm hoping the Court will go under the
12 recommended guidelines.

13 THE COURT: Thank you. Thank you. Thank you, Mr.
14 Muawad.

15 Mr. Berry, is there any statement you would wish to
16 make at this time?

17 DEFENDANT BERRY: Yes, sir. I prepared a statement
18 that I'd like to read if that's okay with you.

19 THE COURT: Very well. Very well.

20 DEFENDANT BERRY: Your Honor --

21 THE COURT: You can pull that down.

22 DEFENDANT BERRY: Down? Is that good?

23 THE COURT: Yeah, that's good.

24 DEFENDANT BERRY: Your Honor, respected judge, I
25 want to make this statement today on the day of my sentencing

1 for a number of reasons. It is a combination of personal
2 culpability, accepting responsibility, a plea for leniency,
3 and a number of requests. I hope that I will be able to earn
4 your coveted attention for a brief moment.

5 Considering the main source of information about me
6 that you possess is my Presentence Investigation Report, I
7 would argue that what you know about me is of a negative
8 connotation, and rightly so. I'm not only regretful of my
9 past criminal behavior, but at points, but at -- but at points
10 consumed with the deep feeling, deep feeling of remorse, a
11 deep feeling of remorse that for some time in my life it was
12 one of trouble and heartbreak for my family, a violation of
13 the laws and standards of society, and a detriment to an abuse
14 of my own self.

15 I understand the wisdom and purpose behind the
16 Presentence Investigation Report in helping you to determine a
17 sentence according to the sentencing guidelines which will
18 mete out an appropriate punishment for the crime I committed
19 and to help establish respect for the law and the preservation
20 of a stable and secure society. I have nothing but admiration
21 for the purpose of this endeavor, and I'm not seeking to
22 debase its inherent value.

23 However, many aspects of the PSI describe someone
24 who no longer exists. I say in all honesty and sincerity that
25 I have changed my life for the better and the way of life

1 embodied in the PSI is something relegated to my past, and I
2 can say that in total confidence. Anyone who truly knows me
3 amongst my family and loved ones can testify to this reality.
4 And when you weigh your decision and judgment in regards to
5 me, I would ask that you please consider the character letters
6 written on my behalf to help you formulate a more fair
7 perception of who I am in contrast to the PSI.

8 I have made the conscious decision and choice in my
9 life to exert my utmost effort to dedicate my life to God in
10 the way that I understand him after living a life detached
11 from him. Through my journey to gain a nearness to him, I've
12 shed the trappings and pitfalls of my previous life, embracing
13 a choice to abide by the law, abstain from intoxicants, become
14 engaged to get married, seek and obtain employment, and
15 further my education when possible. Five years ago I never
16 would have believed, nor the people around me, that this would
17 be my mind-set.

18 While on parole I successfully completed an 18-week
19 drug program. I was never violated for a dirty urine or
20 failed a breathalyzer test. I participated in multiple
21 training courses from landscaping to energy-efficient
22 construction, receiving certification in all programs after
23 successful completion. I attended courses at a local
24 community college and would love the opportunity to continue
25 my education. I actively sought employment in various fields

1 and successfully obtained a position at a lodge and retreat,
2 fulfilling many roles from hosting weddings to constructing a
3 wheelchair ramp from scratch.

4 On more than one occasion I was described by my
5 parole agents as a model parolee. My employer related to me
6 that once my parole agent called her to check up on me,
7 describing me to my employer as one of her best parolees,
8 making a comment that she, quote, never even heard me cuss.
9 Another of my parole agents only had me visit her office once
10 every two months, describing my current status as being on
11 parole as a waste of her time. She even contacted her
12 superiors in Lansing to have me just discharged from parole,
13 but her request was rejected for unknown reasons.

14 My family can also vouch on my behalf the continued
15 transformation my life has taken in many aspects, from kicking
16 a drug habit to adopting a whole new circle of friends, doing
17 positive things in their lives and community. You only need
18 to make reference to some of the observations contained in the
19 character letters they have written. I'm forever thankful to
20 them for the cherished love and unwavering support and
21 encouragement.

22 Having said that, I want to continue on this path of
23 seeking to do the right thing in my life by accepting
24 responsibility for the crime I have committed. The decision I
25 made was rash, irresponsible, and potentially dangerous. I

1 allowed my intellect and higher self to be overridden by the
2 base emotions of anger, anxiety, and ill intent. My actions
3 could have resulted in personal injury to the special agent
4 and possibly even myself which displayed a blatant disregard
5 for life and property.

6 Furthermore, I impeded the special agent from
7 fulfilling his duties which was his job combined with his
8 greater responsibility of serving this country and exerting
9 his efforts to keep it safe. I feel nothing but regret for
10 what I did, and if the agent is here now, I hope that he has
11 the capacity to forgive me for my transgression against him.
12 I personally wish I could tell him face-to-face that I
13 don't -- that I don't -- that I don't hate him or harbor ill
14 feeling -- excuse me. I don't hate him or harbor ill feeling
15 toward him nor did what I did because of who he is.

16 I pray that I will have the opportunity to right my
17 wrong and fully earn the fulfillment of my debt to society
18 because of my actions. I'm prepared to accept the
19 consequences of my actions whatever that is to be.

20 In light of all this, I'm asking if the Court would
21 afford some leniency towards me in my sentence. Having fully
22 comprehended the sentencing guidelines, I feel that some of it
23 over-represents some of my criminal history which is rife with
24 personal drug use and simple possession. The only felony on
25 my record is the distribution of three grams of marijuana for

1 which I was sent to prison. My criminal history is a category
2 VI not because of felonies related to violence or firearms,
3 but due in part to four misdemeanor possessions of marijuana
4 whose total street value doesn't even approach \$100.

5 I understand the function of the sentencing
6 guidelines and the purpose they serve to mete out consistent
7 punishments and eliminate sentencing disparities. But I feel
8 that it can't take into account the fact that I was an
9 individual with a drug problem, immature, who was struggling
10 to find a direction in life. Unfortunately, this led to
11 becoming entangled in the criminal justice system from my
12 frequent marijuana use and possession. I implore the Court to
13 please take into consideration that a majority of my criminal
14 record is constituted of petty drug crime that was accumulated
15 within a relatively short period of time in contrast to the
16 larger segment of my life which has been crime-free. I am not
17 someone who has lived a life of crime from childhood to the
18 present, and I have exerted my utmost to redeem myself after
19 having lived outside the confines of the society's rule of law
20 and the standards it requires of a citizenry for a brief time
21 in my life.

22 I reiterate that whatever this sentence the Court
23 wishes to impose, I accept the consequences and ramifications
24 of my own actions. I will complete successfully any term of
25 supervised release if it is imposed upon me as I sincerely

1 wish to abide by all its conditions and stipulations. If a
2 fine is imposed upon me, I make the request that the Court
3 vacate the payment of the fine until I am released from
4 custody. I have no qualms about paying any form of
5 restitution, but I wish if I'm able to alleviate the financial
6 burden placed upon my family due to my imprisonment.

7 Before I end, I feel like I must say something to
8 the presiding judge, as I feel I have to do it for my own
9 soul. Whatever sentence you impose upon me today, I want you
10 to know that I feel no animosity towards you nor harbor any
11 ill will. Whether that even matters to you, I'm not sure, but
12 I felt an overwhelming desire to express this sentiment
13 towards you. Too often this world is consumed with negativity
14 and hate, and I refuse to allow myself to be someone who
15 entertains disdain for you just for doing your job and
16 fulfilling your duties the best way that you know how,
17 especially when it has been my own criminal behavior which has
18 placed me in the situation that I am today.

19 Whatever happens beyond completion of my statement,
20 I wish success and happiness to you, the prosecutor, and
21 anyone within the FBI who was involved in this case. Thank
22 you for your time.

23 THE COURT: Thank you. Thank you, sir. Remain
24 there at the podium if you would.

25 Is there anything you wish to say, Mr. Frank?

1 MR. FRANK: A few comments, Your Honor.

2 First I'd like to address two things that are stated
3 in defendant's sentencing memo, and these are comments about
4 the larger investigation in this case where the defense says
5 that the conduct under investigation is First Amendment
6 protected and asks the Court not to consider claims by the
7 government about the larger investigation. I just want to
8 state and make it clear for this record that from government's
9 perspective the larger case is not what we're here about
10 today. Whether that larger investigation eventually results
11 in charges remains to be seen, but that will be for another
12 day, and the government is not asking the Court to consider
13 the overarching matter under investigation that led to the
14 defendant being under surveillance over the weekend of 9/11.
15 So there are no government claims about that larger
16 investigation beyond the fact that it was ongoing and that
17 defendant knew about it, and that it's significant because of
18 what it says about his state of mind when he put his car in
19 reverse and tried to ram Special Agent Sam Moore while that
20 agent was on duty.

21 If we look at this case, the defendant knew that he
22 was under investigation because there was a search warrant
23 executed back in March of 2011. He knew it was the FBI
24 investigating him, and he knew what the investigation was
25 about. So on the weekend of 9/11 he knew that it was the FBI

1 that was surveilling him, and in spite of that, in spite of
2 this whole constellation of factors, he got mad and tried to
3 ram an FBI agent on duty in his vehicle, and that's troubling
4 for a couple of reasons.

5 First off, in isolation it doesn't matter whether
6 someone gets aggravated because they're being surveilled or is
7 angry. I mean, so what? People do not get to try and ram
8 federal law enforcement agents who are on duty. So in
9 isolation we think this is a very serious offense.

10 But in context the defendant said something during
11 his allocution that struck me. He said that the conduct
12 summarized in the presentence report, I believe the phrase he
13 used was relegated to the past. Well, I know that Your Honor
14 is in the habit of very carefully reading each PSR, and the
15 Court may recall that in Paragraph 51 of the presentence
16 report there's a reference to defendant being in a fight with
17 local law enforcement. Now, granted, that was some time ago,
18 but the fact remains that this is that same sort of conduct
19 again. He gets mad at law enforcement and he lashes out at
20 law enforcement.

21 So the notion that all of that stuff in the
22 presentence report is relegated to the past, not necessarily.
23 In the government's view, his conduct in this case kind of
24 pulls that skeleton back out of the closet and makes it
25 current again.

1 In this case, Your Honor, the FBI obviously was not
2 conducting surveillance because they were bored or were out on
3 a lark or looking for something to do. I'm sure Special Agent
4 Moore would rather have been home late on that Friday night.
5 Instead, he was on duty performing his job and surveilling the
6 defendant when the defendant lost his temper and lashed out at
7 the agent.

8 And again, even if being under FBI surveillance is a
9 stressful experience, his freedom of movement was not
10 restricted in any way. He was free to go wherever he wanted
11 to go and to engage in whatever legal activity he wanted to
12 do. He just got mad, and that's no kind of excuse for what he
13 did.

14 So from the government's perspective, Your Honor,
15 the sentencing factors that loom large or the sentencing
16 considerations in this case are the need to deter this
17 defendant to get it through his head once and for all that you
18 don't fight law enforcement to deter him, to deter other
19 people who might think they have some justification for
20 lashing out at law enforcement, and then we'd also ask for a
21 sentence that will reflect the seriousness of this crime, this
22 offense of conviction. Thank you.

23 THE COURT: Thank you.

24 This matter carries an adjusted offense of 23 and a
25 criminal history level of VI in this matter.

1 Let me see if I understand this. Paragraph 51 does
2 discuss something about eight years ago, I guess, or somewhere
3 around that where there was a fight with a police officer.
4 This does in Paragraph 54 describe a borrowed knife with a
5 five-inch blade that apparently was involved in a matter that
6 involved the police and there was an arrest and whatever. And
7 then in Paragraph 55 there was -- apparently this was
8 involving -- it's a local disorderly conduct case in St. Joe
9 County, but apparently involved a jail situation where it was
10 learned that an individual was going to use a sharpened
11 toothbrush to stab another inmate, and it was found that Mr.
12 Berry was the person in possession of that.

13 More importantly, there was a discharge of Mr. Berry
14 from the Michigan Department of Corrections back here on June
15 26th of 2011 into parole at the time. That's not very long
16 ago. And so we have an individual coming out, a marked
17 underachiever for which -- let's make the record very clear.
18 This Court has so many people coming before it, it doesn't
19 have any animus toward anybody. It's just doing its job.

20 But here's an underachiever, a marked underachiever
21 who has very little work record by virtue of the number of
22 occasions he has been incarcerated. Nine previous criminal
23 convictions, eight misdemeanors and a felony. Significant use
24 of alcohol and drugs with this violence this Court has talked
25 about. Mr. Berry has been on supervision four times. He has

1 violated supervision four times. So whether this is the old
2 Mr. Berry or the new Mr. Berry, I -- this is the old Mr.
3 Berry.

4 So we look at the nature and circumstances of this
5 offense which potentially could have been very disastrous. It
6 was undertaken knowingly and intentionally against a federal
7 official. But this cannot be completely divorced from the
8 other behaviors, from the fact that Mr. Berry was on
9 supervised release. He did have rather strict controls in
10 where he could go and what he could do while he was on
11 supervised release.

12 Secondly, the history and characteristics here add
13 up to someone who has had significant difficulties adjusting
14 to society. Call it lawful society, whatever you want to call
15 it. Significant difficulties coming up to the standards which
16 are minimal standards required of someone living here in the
17 state of Michigan and in the United States.

18 So the seriousness of this offense, the apparent
19 need for greater respect for law and its protections as well
20 as its enforcement, and a just punishment that will provide
21 adequate deterrence and protect the public while at the same
22 time providing some educational and correctional treatment has
23 to be all balanced within these purposes of the federal
24 sentencing statute, 3553(a). There is a guideline range in
25 this matter of 92 to 115 months that this Court has as well

1 consideration from.

2 Whether there is a variance or a departure from it
3 requires a very careful look at all the facts and
4 circumstances. This Court believes that there is no reason to
5 work into a variance or a departure in this case by virtue of
6 not only the criminal history level, but the facts and
7 circumstances giving rise to the offense level.

8 So therefore, this Court believes that some lenity
9 should be given despite the fact that Mr. Berry was in fact on
10 parole at the time, but 92 months in the custody of the
11 Federal Bureau of Prisons this Court believes is essential to
12 achieve not only the objectives which we talked about, I
13 talked about just a second ago, but also to give Mr. Berry the
14 chance to receive some mental health assessments and some
15 treatment if indicated. It appears that in the past Mr. Berry
16 has had the benefit of some mental health therapies and even
17 some drug regimens as part of that, and it would be this
18 Court's desire that obviously those very thorough and careful
19 examinations be conducted, and if in fact there is a need for
20 some assistance in that regard, then I think that would be
21 better, much better for Mr. Berry, and it clearly will be
22 indicated that is what is required by this Court.

23 Secondly, Mr. Berry will be provided with
24 educational opportunity. This Court is struck with the fact
25 that here is an intelligent individual, intelligent by

1 anyone's calculation. And when the Court said an
2 underachiever, it meant exactly that, and that is, why is Mr.
3 Berry here? That's the first question. Why isn't he at a
4 workplace? Why isn't he doing something productive in the
5 community? Well, that's all part of this history question
6 that we have in front of us and potentially maybe some mental
7 health issues. But I want some educational attainment to be
8 had in this matter.

9 In fact, Mr. Berry, as part of your stay there, I
10 want to hear from you. I want to hear what you are learning
11 or what courses you're taking and what you're doing to make
12 yourself not only employable, but what you're doing to make
13 yourself a better member of the community. Vocational
14 opportunity, yes, I want you provided with that, but first and
15 foremost I want you to be provided with educational
16 opportunity, and I want to see that that is done in this
17 matter.

18 Thereafter you're placed on three years of
19 supervised release with the standard conditions of reporting
20 and remaining law-abiding. Now, Mr. Berry, I want to be
21 honest with you, fair with you, and tell you that in the
22 federal courts we take supervised release very seriously. No
23 fooling around while you're on supervised release. No getting
24 in trouble while you're on supervised release.

25 You are to report monthly or more often as the

1 probation officer would require. Initially we'll have testing
2 for drugs, but I want no drugs and I want no alcohol. I want
3 you to be free of them. I want you to live a sober life. And
4 if indicated through the Bureau of Prisons that medications or
5 some other form of -- some other regimen would be of
6 assistance to you in that mental health issue -- and this is
7 not anything to be ashamed about at all; some people just have
8 little issues with regulating -- I want that taken care of in
9 conjunction with your supervised release.

10 No association with any ex-felons or persons in the
11 criminal justice system without the supervised release
12 officer's consent. I want you to maintain legitimate
13 full-time employment as approved by the probation officer, and
14 if required in a testing and treatment for substance abuse,
15 that you do that. I don't think it will be.

16 The first 12 months that you're on supervised
17 release, you will be placed on curfew. From 10:00 a.m. till
18 6:00 a.m. I want you home. I want you inside unless excused
19 by the probation officer.

20 I'm going to assess a fine of \$1,000, but I'm going
21 to waive the interest and I'm not going to require any
22 payments until 60 days after supervised release is commenced,
23 and that's only \$50 a month. Mandatory special assessment of
24 \$100 will be required in this matter.

25 Are there any legal objections to be lodged first

1 from the government as to the sentence this Court is
2 imposing?

3 MR. FRANK: No legal objections, Your Honor. If I
4 could clarify one thing for the record, I believe the Court
5 stated in its discussion of sentencing factors that Mr. Berry
6 was on parole at the time he committed the offense. I
7 double-checked with the agent. He had completed parole in
8 June, so when he committed this offense, the offense of
9 conviction, he was off parole. With that --

10 THE COURT: Was he discharged? I guess I'm unclear,
11 and the officer that wrote the presentence report is not here.

12 MR. FRANK: Yes, sir. What happened was that he
13 was on parole when Michigan found out about the conduct under
14 investigation and the fact that the FBI had executed a search
15 warrant. They revoked his parole, sent him back to prison.
16 He completed service of that final leg in June and was
17 released, and at that point from June until September he was
18 done with the State of Michigan.

19 THE COURT: All right. Okay.

20 MR. MUAWAD: Correct, Your Honor.

21 THE COURT: Thank you. That's correct?

22 MR. MUAWAD: Yes.

23 THE COURT: Okay. Very good. Thank you. I will
24 make that notation. That was not clear in the presentence
25 report.

1 Anything else?

2 MR. FRANK: No, sir.

3 THE COURT: Okay. Anything else, Mr. Muawad?

4 MR. MUAWAD: Two housekeeping matters, Judge. When
5 you set the curfew, did you mean 10:00 p.m. or 10:00 a.m. to
6 6:00?

7 THE COURT: 10:00 p.m. to 6:00 a.m.

8 MR. MUAWAD: I thought I heard a.m. I apologize.

9 THE COURT: Oh, no, I'm sorry.

10 MR. MUAWAD: And then would the Court, if eligible,
11 recommend the drug program for him if he's eligible?

12 THE COURT: Yes, and that's what this assessment is
13 going to be concerning.

14 MR. MUAWAD: Very good. Otherwise that's all I
15 needed to say. Thanks.

16 THE COURT: Now, I want to say this. That home
17 confinement and curfew may be with electronic monitoring. I'm
18 leaving that to the discretion of the supervised release
19 officer. I think frankly Mr. Berry should be old enough and
20 mature enough that he knows what 10:00 p.m. is and he knows
21 what 6:00 a.m. is and he knows what happens if he's running
22 around the streets. My grandmother always told me nothing
23 good ever happens after 11:00 at night, and I didn't think she
24 was correct at the time, but I do now. All right.

25 MR. MUAWAD: No problem, Your Honor.

1 THE COURT: Anything else?

2 MR. MUAWAD: Not on behalf of defendant, no.

3 THE COURT: Okay. Okay. You have a right of appeal
4 from this sentence and this conviction. You have 14 days
5 within which to file that appeal. Your obligation will be
6 upon counsel to assist you if that is necessary. You're
7 remanded to the federal marshal for the execution of sentence
8 with the appropriate credits in this matter.

9 Again, thank you, Mr. Muawad, for the representation
10 you've provided in this matter.

11 MR. MUAWAD: Thank you, Judge.

12 THE COURT: That's all.

13 (Proceedings concluded at 11:17 a.m.)
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CERTIFICATE OF REPORTER

I, Kevin W. Gaugier, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript was prepared by me.

/s/ Kevin W. Gaugier

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